



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: August 2, 2013

Approved

Date

8/5/13

COUNCIL DISTRICT: 3

SUPPLEMENTAL

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 20.85.020 OF CHAPTER 20.85 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE (THE ZONING ORDINANCE) TO CLARIFY THE MAXIMUM ALLOWABLE BUILDING HEIGHT ON THE NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT

REASON FOR SUPPLEMENTAL

The reason for this Supplemental Memorandum is to provide the City Council with a more comprehensive response to the letter from Mr. Pirayou that was received by the Planning Commission and staff on the day of the Planning Commission hearing on the ordinance on July 24, 2013, and to clarify and explain in further detail the environmental clearance review and determination for the proposed ordinance in compliance with the California Environmental Quality Act (CEQA).

BACKGROUND

On July 15, 2013, Planning staff issued a memorandum to the Planning Commission regarding Item 4.f on the July 24, 2013, Planning Commission Agenda. In this memorandum, staff recommended Planning Commission approval of a recommendation to the City Council to amend Section 20.85.020 of Chapter 20.85 of Title 20 of the San José Municipal Code (the Zoning Ordinance) to change the maximum allowable Building Height on the Norman Y. Mineta San José International Airport (Airport) property within the jurisdiction of the City of San José, so that the maximum allowable Building Height on the subject property would be defined by the airspace requirements of the Airport as determined by the Federal Aviation Administration

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(FAA), to further implement the height and economic development goals and policies in the Envision San José 2040 General Plan, and to make other technical, non-substantive, or formatting changes within those sections of Title 20.

On July 24, 2013, the Planning Commission received a letter from Ash Pirayou of Rutan & Tucker, LLP, representing Atlantic Aviation, which asserted that the amendment to the Zoning Ordinance cannot be approved because the City 1) failed to follow required procedures, and 2) failed to comply with CEQA. Staff provided a preliminary verbal response to the Pirayou letter to the Planning Commission during the discussion of the proposed amendment (i.e., Item 4.f) at the Planning Commission meeting that same evening.

ANALYSIS

Assertion #1: City May Not Approve the Project Without Complying with the State Aeronautics Act

The Pirayou letter states that the City cannot approve the amendment to the Zoning Ordinance without first obtaining a determination from the Santa Clara County Airport Land Use Commission (ALUC) that the amendment is consistent with ALUC's adopted Comprehensive Land Use Plan (CLUP) for Mineta San José International Airport. The letter notes that the ALUC was scheduled to discuss the amendment at its July 24, 2013 meeting, the same date as the Planning Commission meeting on the same item. Mr. Pirayou asserts that the Planning Commission was precluded from taking any action on this amendment prior to receiving a consistency determination from the ALUC.

Response to Assertion #1

In response, staff notes that the Planning Commission's action on the proposed amendment is not an approval, but a recommendation for approval to the City Council. Thus, no approval has preceded the ALUC's consistency determination. Further, during the discussion of the amendment at the Planning Commission meeting, Staff reported that the ALUC had voted unanimously earlier that evening that the amendment is consistent with the CLUP. Staff has since received written confirmation of the ALUC determination in a letter from the ALUC that is included as an attachment to this memorandum.

Assertion #2: The City May Not Approve the Project Without Complying With CEQA

Mr. Pirayou's letter maintains that the City's reliance on its certified Envision San José 2040 General Plan Program Environment EIR as the CEQA clearance for this amendment to the Zoning Ordinance is inadequate. Specifically, the letter asserts that although the Program EIR addressed increased building heights in intensification areas, it did so only for areas around the Airport (i.e., not on the Airport itself), and even then it only addressed potential air safety impacts.

Mr. Pirayou's letter further maintains that the City is violating CEQA by improperly piecemealing the proposed amendment to increase building heights from other projects at the Airport, such projects which are interconnected with – and cannot be split from – this amendment.

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Specifically, the letter states that this amendment must be evaluated together with 1) a new Fixed Base Operator (FBO) to be constructed by Signature Aviation, 2) a Safety Risk Assessment, 3) a potential permanent closure of Runway 11/29, and 4) future full development of the West Side of the Airport.

Response to Assertion #2

The City is relying on the Envision San José 2040 General Plan Program EIR for the CEQA clearance for the height increase at the Airport because the 2040 General Plan is the document that sets forth policies regarding the future character and quality of development in San José. When compared to previous versions of the City's General Plan, the 2040 General Plan, which includes a comprehensive update to the San José 2020 General Plan, removed all Citywide height restrictions from the General Plan and recommended implementing actions to re-establish those regulations in the Zoning Ordinance. The regulations in the Zoning Ordinance implement numerous General Plan policies related to height, including Community Design Policies 8.1 through 8.4, which focus on land use compatibility, as well as Transportation Policy 14.1, which focuses on safety within designated Airport Influence Areas and consistency with ALUC plans and policies. Accordingly, the discussion of heights in the 2040 Program EIR describes these policies, which are designed to avoid land use and safety impacts associated with building heights. Specific references are to Section 3.1, Land Use, and Section 3.8, Hazards, in the 2040 Program EIR.

Despite the analysis of heights in the above-referenced sections of the 2040 Program EIR, Mr. Pirayou's letter maintains that the assessment of heights in that document was inadequate with regard to the Airport itself. However, this assertion omits a critical fact, which is that the City's policies with regard to building heights are not new; they were already embodied in the previous version of the City's General Plan known as the San José 2020 General Plan. For example, in the San José 2020 General Plan, Urban Design Policies 10 and 11 focused on heights in terms of land use compatibility and Aviation Policies 46 through 48 focused on heights in terms of airport compatibility and ALUC consistency. Therefore, the City's land use policies with regard to building heights were part of the existing conditions/baseline during the 2040 General Plan process, and there was no need for the 2040 Program EIR to undertake a comprehensive analysis of this issue because the policy changes being considered were not substantial.

Mr. Pirayou's letter also omits the fact that the General Plan, by definition, incorporates numerous plans that the City has previously adopted, each of which focus on a certain area of the City or a certain aspect of development in greater detail than what is described at the general plan level. Examples include the North San José Development Policies Program, the Downtown Strategy Plan, and the Midtown Specific Plan, all of which have undergone their own review under CEQA. The 1997 San José International Airport Master Plan, as amended, is another example of a plan that is an integral part of the 2040 General Plan. Economic Policy 4.5 and Transportation Policy 13.2 support the implementation of the Airport Master Plan.

Similar to the other plans incorporated into the 2040 General Plan, the Airport Master Plan was approved only after undergoing review under CEQA. The CEQA review included a 1997 EIR, a 2003 Supplemental EIR, and a number of EIR Addenda.

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In terms of relevance to the current proposal to amend the Zoning Ordinance to increase the building heights at the Airport, what is important to know is that the proposed heights were envisioned in the Airport Master Plan and such heights were analyzed in the accompanying Master Plan EIR.

Projects identified in the Master Plan include a new 8-level rental car garage, two new 8-level public parking garages, new air cargo buildings, and new passenger terminals, all of which would be higher than the 50-foot height limit in the Heavy Industrial (HI) zoning. For example, the height of an 8-level parking garage would be approximately 120 feet.

The Master Plan EIR acknowledged the existence of structures at the Airport that exceed 50 feet, including the old FAA control tower (65 feet in height; since replaced with a tower 109 feet in height), PG&E electric transmission towers, and numerous light poles (up to 83 feet in height).

- Section 3.10.2.1 of the Master Plan EIR included an analysis of the aesthetic impacts of all of the new structures to be constructed under the Master Plan and concluded that such impacts on the main Airport property (south of U.S. 101) “would be visually compatible with the existing urban character of the Airport and its vicinity.” This conclusion was based in large part on the fact that the land uses adjacent to the Airport are primarily commercial, industrial, and include three major freeways (I-880, SR 87, and U.S. 101).
- Section 3.1.3.1 of the Master Plan EIR assessed the land use compatibility impacts of the proposed development at the Airport and concluded that although the Master Plan “would result in an increase in the intensity of land uses at the Airport, this would not change the existing relationship of compatible land uses between the Airport and adjacent areas.”
- Section 3.13.2 of the Master Plan EIR notes that all improvements will be designed to comply with FAA guidelines and standards associated with maintaining air safety. The text notes that all FAA-mandated runway protection zones (RPZs) and object free areas (OFAs) will be sized and maintained per FAA standards.
- Sections 3.1.1.1, 3.1.1.2, 3.1.1.3, and 3.1.3.1 of the Master Plan EIR contain discussion and analyses of FAA and ALUC safety policies pertaining to the Airport, including height restrictions for all buildings and structures. The analysis of the Master Plan concludes “new uses proposed within the Airport would be consistent with the predominant use of and plans for the Airport, namely, its safe and effective function as a major air transportation facility.”

As a point of reference, there are currently 49 structures at the Airport that exceed 50 feet in height; these structures range in height from 55 feet to 116 feet.

Finally, in response to Mr. Pirayou’s assertion that the amendment to the Zoning Ordinance to increase heights at the Airport to those allowed by the FAA must be analyzed together with other potential projects, staff has concluded that this assertion lacks merit for the reasons described

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above. No new CEQA compliance for this amendment is warranted because the impacts of the amendment were previously analyzed in the 2040 General Plan Program EIR and the Airport Master Plan EIR. This amendment does not involve new significant effects beyond those analyzed in these two EIRs.

CONCLUSION

In compliance with State law, the City referred the proposed ordinance amendment to the ALUC, which determined that the amendment is consistent with the CLUP. The proposed amendment would update Section 20.85.020 of the Zoning Ordinance to be consistent with the Envision San José 2040 General Plan and the San José International Airport Master Plan. The impacts of each of these Plans, including the proposed increase in building heights at the Airport to be included in the Zoning Ordinance, were disclosed in the Envision San José 2040 Program EIR and Airport Master Plan EIR. Therefore, the City has complied with CEQA.

CEQA

Envision San José 2040 General Plan Final PEIR, Resolution No. 76041, and Airport Master Plan Update Final EIR, Resolution Nos. 67380 and 71451.

/s/

JOSEPH HORWEDEL, DIRECTOR

Planning, Building and Code Enforcement

For questions please contact Andrew Crabtree, Division Manager, at (408) 535-7893.

Attachment: ALUC Letter of Determination of Consistency

ALUC

SANTA CLARA COUNTY
AIRPORT LAND USE
COMMISSION

Airport Land Use Commission

County Government Center, 70 W. Hedding Street, East Wing, 7th Fl., San Jose, CA
95110
(408) 299-5786 FAX (408) 288-9198

July 25, 2013

To: Jenny Nusbaum
Project Manager
City of San Jose Department of Planning, Building and Code Enforcement
200 East Santa Clara Street, 3rd Floor Tower
San Jose, CA 95113

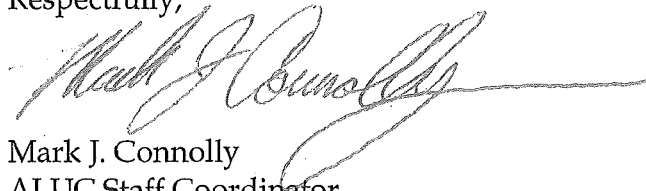
Re: Rezoning Referral for amendments to Title 20 of the City of San Jose Zoning Ordinance as it relates to the height of structures at San Jose International Airport.

Dear Ms. Nusbaum-

Thank you, for the referral of the above-listed project, At its July 24, 2013 Regular Meeting, the ALUC found the subject rezoning referral consistent with the policies contained within the San Jose International Airport Comprehensive Land Use Plan, with no additional recommended conditions.

Should you have any questions, please feel free to contact me at 408-299-5786 or via e-mail at: mark.connolly@pln.sccgov.org.

Respectfully,



Mark J. Connolly
ALUC Staff Coordinator

Cc: Cary Greene, San Jose International Airport Planner